

Senate Bill 531 (As Introduced)

Contact: Office of Policy and Legislative Affairs

Agency: Labor & Economic Growth

Topic:	Watercraft Manufacturers and Dealers
Sponsor:	Senator Hammerstrom
Co-Sponsors:	Senators Basham, Bishop, Gilbert, Olshove, Scott
Committee:	Economic Development, Small Business and Regulatory Reform
Date Introduced:	May 24, 2005
Date of Summary:	June 20, 2005

The bill is entitled the Watercraft Manufacturer and Dealer Act. The bill requires a written agreement between a manufacturer, wholesaler, or their representative and a new watercraft dealer. The bill establishes conditions for cancellation, termination, failure to renew, or refusal to continue a dealer agreement. "Good cause" would be required and is defined. The bill also defines what is not good cause, including a change in ownership, a refusal to purchase or accept delivery of new watercraft parts or accessories, and, in many cases, the fact that the dealer has an agreement to sell another make or line, and the fact that the dealer sells or transfers ownership or stock to a spouse, son, or daughter.

Written notice of a proposed termination, cancellation, non-renewal, or discontinuance of a dealer agreement is required. The notice is to be provided by certified mail. The bill also specifies the contents of the notice and the time frame for notice. If the manufacturer discontinues production of a product line or discontinues distribution of the product line in the state, 180 days notice is required.

Fair and reasonable compensation by the manufacturer is required if an agreement is terminated, canceled, not renewed, or discontinued. The bill lists the items for which compensation is required, including:

- Current model year watercraft, if not materially altered or substantially damaged or is not a special ordered customized watercraft,
- Previous year models, if not materially altered or substantially damaged and paid for within the 2-year period before termination,
- Electronic or printed parts catalogs or other supplies, and any parts inventory

- within an 18 month period before termination,
- Any parts inventory purchased with 18 months before termination.
- Equipment, furnishings, and signs identifying the watercraft or the brand or trade name purchased in the current model year,
- Special tools purchased from or required by the manufacturer within the current model year,
- Expenditures made in marketing products, including boat show exhibit space committed to, but not occupied by the dealer, based upon future anticipated incentives, holdbacks on boats not refunded by the manufacturer, or similar financial promotions before cancellation.

The bill specifies the timing for compensation payments. Compensation for watercraft is required within 30 days. Other items can be compensated within 90 days. The bill provides for interest on unpaid compensation at a rate of 12 percent. The bill defines “fair and reasonable compensation”.

A manufacturer is prohibited from requiring a new watercraft dealer to do any of the following:

- Order or accept delivery of products not required by law that were not voluntarily ordered,
- Order or accept delivery of new watercraft with special features, accessories, or equipment not included in the list price as publicly advertised by the manufacturer,
- Participate monetarily in an advertising campaign or contest, purchase promotional materials, display devices, or display decorations or materials, or pay or assume responsibility for a refund, rebate, or discount in favor of the consumer unless the dealer voluntarily agrees to do so,
- Enter into an agreement in which the manufacturer represents to the dealer that refusing to execute such an agreement will terminate a dealer agreement.
- Change the capital structure of the new watercraft dealership or the financial operation of the dealership, as long as the dealership meets reasonable capital standards determined by the manufacturer,
- Refrain from participation in any other line of new watercraft or related products, as long as the dealer maintains a reasonable line of credit for each make or line, complies with reasonable facilities requirements, and does not change principal management,
- Change location or make substantial alterations to the premises, unless that requirement is reasonable.
- Prospectively assent to actions that relieve a person from liability imposed by the bill or the application of the law of any other state.

The bill prohibits certain actions by manufacturers.

- Adopt, change, establish, or establish an allocation and distribution plan or system that is arbitrary or capricious or modify an existing plan or system in a

- way that causes it to be arbitrary or capricious,
- If a specific model is advertised as being available for immediate delivery, refuse to deliver inventory of that watercraft to the dealer,
- Require the purchase of essential service tools with an aggregate purchase price of more than \$7,500 in order to receive a specific model without providing a good faith estimate in writing of the number of models the manufacturer intends to allocate,
- Increase the price of a new watercraft on models ordered within 15 days after an official price increase notification,
- Fail to reduce the price or provide a cash rebate on a model ordered within 15 days after the dealer receives a notice of a price reduction,
- Except under subpoena, release business, financial, or personal information provided by the dealer to the manufacturer,
- Deny a dealer the right to associate with another watercraft dealer for a lawful purpose,
- Directly or indirectly own, operate, or control a dealer (There are exceptions for temporary ownership, operation, or control in certain circumstances),
- Sell a new watercraft directly to a retail customer other than through its dealers in this state,
- Prevent or attempt to prevent a dealer from changing its executive management, unless the manufacturer demonstrates that a proposed change will result in management by an individual who is not of good moral character or who do not meet reasonable, preexisting, and equitably applied standards of the manufacturer (60-day notice is required in cases of rejection),
- Unfairly prevent a new watercraft dealer from receiving reasonable compensation for the value of the new watercraft dealership,
- Directly or through a subsidiary, terminate, cancel, fail to renew, or discontinue a lease of a dealer's established place of business, except for material breach of the lease.

Dealers are required to provide the price reduction or rebate to any retail customer of \$5 or more on any new current model year watercraft purchased within 30 days after receiving notice of a price reduction. Exceptions are made for introductions of a new model or new model year, adding optional equipment or equipment required by law, revaluation of the dollar on new watercraft or components made in another country, and an increase in transportation charges due to an increase in rates charged by a common carrier or transporter.

The bill indicates that a manufacturer must provide consent to the sale or transfer of a new watercraft dealership to a qualified buyer. The manufacturer must respond in writing to a request for consent within 30 days after receiving the request. A manufacturer shall consent to a new dealer agreement on the same terms of the old dealer agreement if the purchaser/transferee is a qualified buyer. Failure to respond within 30 days is consent to a new dealer agreement. "Qualified buyer" is defined in the bill.

The bill provides for succession in ownership or operation in the case of death or incapacity. Written notice by the designated family member is required within 120 days after the dealer's death or incapacity. The manufacturer may request personal and financial data that is reasonably necessary to determine that the family member meets the criteria established by the manufacturer. The manufacturer may refuse to honor the existing dealer agreement with the designated family member only for good cause. A notice of refusal is required within 60 days and is required to state the specific grounds for refusal and the date of discontinuance. Discontinuance of the agreement takes effect in not less than 90 days. A new watercraft dealer may designate any person as his or successor in writing to the manufacturer.

The bill provides procedures for a new dealer agreement or relocation in an area where another dealer sells the same make or model. Written notice by the manufacturer to each dealer is required. The bill allows a new watercraft dealer to bring a declaratory judgment action in the circuit court to determine whether good cause exists for the proposed location or relocation. In determining whether good cause exists, the court is required to take into consideration certain circumstances, including:

- Permanency of the investment,
- Effect on the retail new watercraft business and the consuming public in the relevant market area,
- Whether it is injurious or beneficial to the public welfare,
- Whether adequate competition and convenient consumer care are provided by other dealers within the market area
- Whether establishment of a new dealer or relocation would promote competition,
- Growth or decline of population and the number of new watercraft registrations in the relevant market area,
- The effect on the additional or relocating dealer of a denial.

The notice and appeal provisions do not apply in the event of relocation of a new watercraft dealer within 2 miles of its established place of business. Reopening or replacement of a closed dealership closed within the preceding year is not subject to the notice and appeal requirements if the established place of business is within 2 miles of the original location.

The bill mandates that if a new watercraft dealer enters into a dealer agreement, the dealer has 30 days to notify every other manufacturer with which it has a dealer agreement, of the new dealer agreement.

A manufacturer is required to specify in writing to each of its dealers the dealer's obligations for preparation, delivery, and warranty service and for the dealer's obligations if the dealer improperly prepares a new watercraft. The manufacturer is required to compensate the dealer for these services. A manufacturer is required to provide to the dealer a schedule of compensation for parts, work, diagnostic time, or service and the time allowance for the performance of the work or service. The schedule is required to include reasonable compensation for diagnostic work, warranty work,

parts used, or service performed. The manufacturer or dealer is required to establish reasonable and adequate time allowances for the diagnosis and performance of required warranty work and service. A manufacturer is prohibited from failing to do the following:

- Perform a warranty obligation,
- Include in a written notice of factory recall the date by which necessary parts and equipment are expected to be available to dealers,
- Compensate a dealer for a repair performed pursuant to a recall.

The bill provides a process for a dealer to file a claim with a manufacturer for compensation for work performed. Manufacturer approval or disapproval is required within 30 days of receipt. A claim may be charged back to the dealer only if it was fraudulent, false, or unsubstantiated and the manufacturer paid the claim within the preceding 6 months. The dealer is required to maintain records on warranty repairs for at least 12 months.

A dealer is required to be compensated by a manufacturer for sales or service promotions. The bill provides procedures for submittal and approval of claims for compensation that are similar to those required for warranty work.

The dealer is solely responsible for damage to a new watercraft that occurs after it accepts delivery and before delivery to the ultimate purchaser. There is an exception if the damage is due to a latent or hidden defect or one that is not reasonably observable at the time of delivery. The manufacturer is solely responsible for damage that occurs before delivery to the carrier or transporter. The dealer is responsible for damage that occurs in transport only if the dealer selects the method of transportation, mode of transportation, and the carrier or transporter. Otherwise, the manufacturer is responsible for damage that occurs in transport.

A dealer may refuse to accept a damaged new watercraft by providing written notice to the manufacturer within 10 days.

A manufacturer is required to indemnify a dealer for a judgment for damages or settlement agreed to in writing by the manufacturer, and for court costs and reasonable attorney fees, if the complaint, claim, or action is based solely on a manufacturing defect or parts or accessories other than outboard motors and trailers. Indemnification is not required if the dealer has not given reasonable notice in writing of the complaint, claim, or action.

A dealer may bring an action against a manufacturer to recover actual damages resulting from termination, cancellation, failure to renew, or discontinuation of a dealer agreement without good cause. A manufacturer that violates the act is responsible for all damages sustained by a dealer as a result of the violation and for court costs and reasonable attorney fees of the dealer and vice-versa. A manufacturer or dealer may bring an action for declaratory judgment in any controversy arising under the bill. Injunctive relief is

available to a manufacturer or dealer in cases of termination, cancellation, non-renewal, or discontinuance of a dealer agreement or any other violation.

The bill does not apply to dealers located outside the state.

The Attorney General may commence a civil action in the county in which a violation occurs to enforce compliance or to restrain a violation. The bill provides for a civil fine of not more than \$5,000 per day. A person who violates the bill's requirements would be guilty of a misdemeanor. The bill provides for a fine of \$5,000 per day.

Public Act 88 of 1989 is repealed.

This bill's provisions take effect 30 days after the date it is enacted.